REMARKS

Claims 19, 23 and 27 have been objected to due to informalities. The claims have been amended appropriately.

Claim 38 (the Office Action has a typographical error and states claim 8) has been rejected under 35 USC 101 as directed to non-statutory subject matter. Presumably, claims 19, 23 and 27 are also rejected under 35 USC 101 as directed to non-statutory subject matter given the Examiner's indication that these claims fail the machine-or-transformation test. The rejections are respectfully traversed.

Claims 19, 23 and 27 are indeed tied to a particular machine, namely the packet-switching data network that has a first and second transmission path. A packet-switching data network is something more than, for example, a general purpose computer. This type of network allows data packets to be routed throughout the network in the manner recited in the claimed invention. With respect to claim 38, this claim does not fall under the *Bilski* test as it is not a method claim, nor is a computer program *per se*. The claim clearly recites a network node R that is physical in nature. See, for example, page 16 of the original specification (and Figure 5) reciting a network node R with four bi-directional access points or ports P1 to P4.

Claims 19-21-23, 25-27 and 29-38 have been rejected under 35 USC 103(a) as unpatentable over Billhartz in view of Dighe. The rejection is respectfully traversed.

The claimed invention relates to a system and method for routing data packets. A first transmission path is assigned a maximum traffic distribution weighting, while another path is assigned a minimum traffic distribution weighting (e.g. zero). Nodes in the system turn to the path with the minimum traffic distribution weighting only when the adjacent router or next hop is no longer reached by any other path having a positive (e.g. greater than 0). Significantly, this

helps to eliminate circulation of packets in the network. Moreover, the traffic distribution weighting is changed for the alternative path(s) in the event of failure of the primary link.

The Examiner notes that Billhartz discloses the claimed invention except for assigning the maximum traffic distribution weighting to the second transmission path in the event of failure of the first transmission path. However, Dighe is cited as disclosing this feature. Applicant respectfully disagrees.

More specifically, the Examiner states that Dighe discloses an algorithm to find maximal network primary capacities and alternative routes for restoration under any single link failure (col. 6, lines 24 - 26). When the algorithm terminates, the result is a static capacity assignment for the network and a set of alternative routes for each link with related primary capacity pij and reserved capacity rij, I,j=1,2, ..., N for each link (col. 8, lines 40 - 44). Link capacities and their usage, however, are completely different from link weights, as link capacities describe limits of traffic loads that can be carried and are used, for example, for limiting traffic loads by admission control (ref. Dighe, col. 8, line 64 - col. 9, line 10). Traffic distribution weightings, on the other hand, simply control the distribution of packet traffic in terms of, for example, percentages of traffic taking one or the other way independent of the absolute amount of traffic (instant specification at paragraphs [0007] and [0008]).

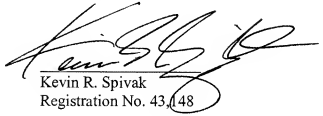
Applying the results of Dighe implies the usage of path and bandwidth controlled, call and/or connection oriented routing (Dighe, col. 1 lines 5 - 12), whereas the claimed weight based traffic distribution is predestined (but not limited) to be used in a purely packet operated (and in most cases connectionless) network. Weights do not limit the traffic, but the capacities of Dighe do, - weights just control traffic distribution. Dighe does not disclose traffic weights or assigning the maximum traffic distribution weighting to the second transmission path in the event of failure

of the first transmission path, as required by the claimed invention. Even assuming *arguendo* that Dighe assigns something after finishing the algorithm, these are calculated capacities that are different and far from a maximum possible capacity as this would jeopardize the objective of near-optimal bandwidth assignment results as indicated in col. 3 lines 17 - 20 of Dighe.

Since the recited structure and method are not discloses by the applied prior art, either alone or in combination, claims 19, 21-23, 25-27 and 29-38 are patentable.

In view of the above, Applicants submit that this application is in condition for allowance. An indication of the same is solicited. The Commissioner is hereby authorized to charge deposit account 04-1061 for any fees which are due and owing, referencing Attorney Docket No. 39090-37.

Respectfully submitted,



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